

The 13th June, 1986

No. 9/8/86-6/Lab./4419.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/s Great Indian Roadlines Kewal Colony, Mathura Road, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 31 of 1984

between

SHRI DALIP SHARMA, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S GREAT INDIAN ROADLINES, KEWAL COLONY, MATHURA ROAD, FARIDABAD.

Present.—

Shri R. L. Sharma, for the workman.

Shri A. S. Chadda, for the respondent-management.

AWARD

This industrial dispute between the workman Shri Dalip Sharma and the respondent-management of M/s. Great Indian Roadlines Kewal Colony, Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/20-84/8731-36, dated 1st March, 1984 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :—

“Whether the termination of services of Shri Dalip Sharma was justified and in order ? If not, to what relief is he entitled ?”

According to the demand notice, the workman was employed with the respondent on 18th March 1972 as General Clerk. His services were illegally terminated on 31st August, 1982. He has prayed for reinstatement with continuity of service and with full back wages.

This claim has been contested by the management. Objection is taken that the workman was not working at Faridabad at the time of his termination. He was working at Delhi/U.P. Border as Manager. Reference is therefore bad. He was not a labourer. He was working as Manager. Objection is further taken that the management transferred the claimant from Delhi/U.P. Border to Siliguri (Assam). He was directed to take charge at Siliguri with facilities of travelling allowance in advance and rent free accommodation was also given,—vide letter dated 30th August, 1982. The workman did not receive this letter. He also failed to join duty at the place of transfer. The claimant himself failed to report for duty. The management is still ready to take back the workman on duty if he obeys the transfer order. It is, therefore, prayed that claim is liable to be dismissed.

In the rejoinder the workman denied the averments made in the written statement. The reference was contested on the following issues :—

- (1) Whether this Court has no jurisdiction to try this reference ?
- (2) As per reference ?

I have heard the representatives of both the parties and gone through the evidence on record. My findings on the issues are as under :—

Issue No. 1.—The management has relied upon Ex. M-1 and M-2 to prove that on 13th May, 1981 and 7th August, 1981 the workman was working at Delhi/U.P. Border. These are the applications which are alleged to be signed by the workman. These have been proved by MW-1 Shri Vijay Kumar MW-2 Shri Shiv Parshad also proved these two documents. He has seen the claimant writing. I have also tallied the signatures of the claimant on these two documents with his signatures on the demand notice and letter of authority. The first word ‘D’ on Ex. M-1 and M-2 tallied with the word ‘D’ on these two documents. Though the workman had denied the execution of these documents. The workman has not been able to prove that he remained ever posted at Faridabad. He has not summoned the record of the management of the Faridabad Branch to prove that he has been signing the same documents. He has named two workers Shri Ram Sarup and R.P. Singh, who were working with him at Faridabad. He also cannot tell as to how long these two persons worked with him. He has not produced any document to prove that he ever resided at Faridabad. He has not produced Ration Card and land lord that he ever posted at Faridabad. I, therefore, find that the workman never remained posted at Faridabad. He was employed at Delhi/U.P. Border as alleged by the management. Hence the reference was previously rightly rejected by the Government,—vide letter Ex. M-6. This court has therefore, no jurisdiction. The claimant should have knocked the door of the appropriate authority in U. P. State. This Court has, therefore no jurisdiction to adjudicate upon the present reference.

Issue No. 2.—It is contended by the management that they never terminated the services of the workman. He was transferred from Delhi/U.P. Border to Siliguri in Assam but he never joined the place of transfer though he was offered T.A. and free accommodation. The workman as WW-1 has admitted that he was transferred to Siliguri Office but it is denied that any order was issued. The management has relied upon the transfer order Ex. M-3 dated 16th September, 1982. It has been witnessed by two persons. It has been signed by Ashok Goel, Partner. It has been proved by MW-1 Shri Vijay Kumar. He has stated that the workman had refused to receive this transfer order in the presence of Shri S.P. Tiwari and Shri Shiv Parshad Tiwari MW-2 has also proved Ex. M-1 and M-2. There is no reason to disbelieve these two witnesses. Even if it is admitted that the workman was transferred, in that case also the transfer was valid. The employee can be transferred from one establishment to another if, there is a contract to this effect or if the contract is implied from the service. In the present case, it has been admitted by the workman that the respondent management has branch offices at many places in the country. It has also Branch Office at Siliguri. It is, therefore implied that he can be transferred from one place to another. It has been laid down by the Madras High Court in Caravan Goods Carriers Pvt. Ltd., *Vs.* Labour Court, Madras; 1977-II-LLJ-page 199 that "The action of the employer could not be termed unfair. So long as the employer has got the power to transfer his employees, the power being inherent in the nature of employment as in this case, it does not matter whether the employer resorts to any Standing Order. Even if the employer had relied upon the Standing Order for the transfer while there was no Standing Order to that effect, the transfers would not become illegal on that score alone". In this case six employees were transferred on one and the same day. The respondent were transport goods Carriers. It is further held that the management is the best person to judge as how to distribute his manpower and the Tribunals are by no means suited for making decisions in matters of this nature, certainly the order of the Labour Court is liable to be set aside. It is further held that the power in the instant case being power inherent in the nature of employment, as has been repeatedly laid down by this Court. It does not matter whether the management resorts to that power or the Standing Orders. According to the workman his services were terminated on 31st August, 1982. His transfer order is dated 16th September, 1982. The workman submitted his demand notice on 24th December, 1983 after more than one year and four months. According to letter of the Government, dated 21st December, 1982 Ex. M-6 his demand notice was served on 9th November, 1982 it shows that the workman remained silent for two months and 11 days. Had he not been allowed duty he would have approached the Labour Court immediately. It shows that he himself did not want to comply with the transfer order and served the demand notice after a long time.

In view of the above discussions I find that the services of the workman were never terminated. He has himself abandoned the job by not joining on his new place of transfer. The award is given accordingly.

Dated the 4th April, 1986.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endst No. 1225, dated 7th May, 1986

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes, Act, 1947.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

The 16th June, 1986.

Not 9/7/86-6 Lab./4432.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and management of Haryana Roadways, Bhiwani :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 7 of 1983.

between

SHRI SURAT SINGH, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA ,
ROADWAYS, BHIWANI

Shri Bhim Singh Yadav, A.R., for the workman.

Shri Vijay Vir Singh, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Surat Singh and the management of Haryana Roadways, Bhiwani, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. ID/BHN/100-82/1884, dated 14th January, 1983:—

Whether the termination of services of Shri Surat Singh, was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case simpliciter of the petitioner is that he has been in the service of the respondent for the last about eight years and all through his work and conduct has been satisfactory but the respondent chose to terminate his services,—vide order dated 16th June, 1981, which order was illegal and unjustified, capricious and was passed in flagrant disregard of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the termination order is cryptic one and furthermore the punishment awarded to the workman was glaringly disproportionate in relation to his alleged mis-conduct. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent preliminary objections taken are that the management has since lost confidence in the workman, whose services were terminated after holding a proper and valid domestic enquiry, in which, the workman was given complete opportunity of participation and furthermore enquiry proceedings were held after taken into consideration the principles of natural justice. Reply on merits, runs on the same lines and as such, I need not suffer repetition.

4. On the pleadings of the parties, the following issues were settled for decision by me on 12th June 1984.

1. Whether the enquiry held by the management is fair and proper ? OPR.

2. Whether the management has lost its confidence in the workman ? OPR.

3. Whether the termination of services of Shri Surat Singh was justified and in order ? If not, to what relief is he entitled ?

5. The management examined MW-1 Shri Jagbir Singh, its Law Officer, MW-2, Shri J. S. Yadav, the then General Manager, Haryana Roadways, Bhiwani, MW-3 Shri Vijay Vir Singh, another Law Officer. The workman appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard.

7. There are three separate charges of embezzlement against the petitioner. These are detailed in the charge-sheet Ex. M-2/1 for Rs. 11-40, Ex. M-2/7 for Rs. 16—20, M-2/11 relating to Rs. 7.50. Three separate domestic probes were held, two out of which were conducted by Shri Jagbir Singh, Law Officer. These related to the mis-appropriation of amounts Rs. 16-20 and Rs. 7.50. Third domestic probe was held by Shri Vijay Vir Singh, another Law Officer of the respondent. The same was relating to the embezzlement of Rs. 11.40. Copies of the proceedings of all the three domestic probes have been placed on record by the management. I have gone through the same. Since these domestic probes are the handiwork of judicially trained minds, there are hardly any chinks in the same. The evidence adduced during the enquiry proceedings has been properly appraised and the defence plea put forth by the workman was duly taken into consideration while arriving at their findings. On behalf of the petitioner Shri Yadav forcefully contended that since no Presenting Officer on behalf of the management was present during all these domestic probes, inference be drawn that the Enquiry Officer himself acted as a Prosecutor as well as Judge. The fallacy of the contention is obvious on the face of it. Simply because no Presenting Officer was present and usually none are deputed in domestic probe, no inference can be drawn that the Enquiry Officer himself was acting as a Prosecutor. The workman was given full opportunity to cross examine the witnesses produced by the management. If any question was put to any witness by the Enquiry Officer, the same was for the purpose eliciting truth and not to buttress the case of the management. It was also argued by the petitioner that since one Inspector was examined in one enquiry case, though two were present at the time of checking, the said enquiry report be thrown out on the ground of insufficiency of evidence. I find no force in this contention also. The law insist upon quality of evidence and not plurality of the same. So, on this ground also the enquiry report cannot be held to be unfair. I cannot help observing that while conducting the enquiry proceedings, the two Enquiry Officers always adhered to the principles of natural justice and no grievance can be made on behalf of the petitioner that since they were the employees of the respondent, so they were biased against the petitioner. Under these circumstances, there is no difficulty in holding that the enquiry conducted in this case was fair and proper and as such, this issue goes in favour of the management.

Issue No. 2:

8. Alongwith the final show cause notice, the management sent brief history of previous punishments awarded to the petitioner. Right from the word go, meaning thereby that immediately after joining service, the petitioner started mis-conducting himself and during his tenure of employment he earned as many as thirty eight censures, stoppage of increments and another penalties of minor nature, but in the reply filed to the final show cause notice, the petitioner maintained a sullen silence about his previous service record. That would mean that the petitioner has nothing to rebut about the punishment alleged to have been awarded to him. Under these circumstances, the respondent roadways was fully justified in losing confidence in the workman, whose duty is to handle cash daily on behalf of the respondent, exposing him to all temporal temptations to nibble at the State Ex-chequer.

Issue No. 3:

9. The learned Authorised Representative of the petitioner Shri Yadav contended that looking to the long service period of the petitioner, and the fact that he is the only bread earner in the family, interference by this Court under Section 11-A of the Industrial Disputes Act, 1947 is called for. In my opinion, no such interference would be desirable unless the Court finds that the order of punishment was so harsh as to suggest victimisation of the petitioner. The management has been unduly indulgent towards the petitioner in the past. His previous service record is so reprehensible that his continuation in service has been a serious hazard, because the function of the petitioner is to handle cash daily. I am fortified in my views from the observations made in 1984 (3) SLR 514, *State of Punjab and others versus Surat Singh and others*. In this authority his Lordship of the Hon'ble High Court of Punjab and Haryana has cautioned the Courts not to glibly reinstate the Conductors of the State Transport found guilty in indulging in fraud and mis-appropriation Government money. Under these circumstances, the workman is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

Dated 26th April, 1986.

B. P. JINDAL,
Presiding officer,
Labour Court, Rohtak.

—P
Endst. No. 7-83/687, dated 8th May, 1986.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

The 16th June, 1986

No. 9/7/86-6Lab/4433.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of (i) Transport Commissioner, Haryana, Chandigarh (ii) Haryana Roadways, Sirsa.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 2 of 85

between

SHRI UDHAM SINGH, CONDUCTOR NO. 27 AND THE MANAGEMENT OF (1) TRANSPORT COMMISSIONER, HARYANA, (2) HARYANA ROADWAYS, SIRSA.

Shri. V. K. Bansal, A.R. for the workman.

Shri. V. K. Kohli, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act 1947 (hereinafter referred to as the Act) the Governor of Haryana, referred the following dispute, between the workman Shri Udham Singh, Conductor No. 27 and the management of

(1) Transport Commissioner Haryana, (2) Haryana Roadways, Sirsa, to this Court, for adjudication,—*vide Haryana Government Gazette* Notification No. 199—204, dated 2nd January, 1985 :—

Whether the termination of services of Shri Udham Singh, is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor on 31st January, 1973 and that the respondent choose to terminate his services unlawfully,—*vide its order*, dated 2nd February, 1983 after holding a farce of an enquiry, in which he was not given an opportunity of participation and furthermore the charges into which a farce of an enquiry was held was all trumped up and that the Enquiry Officer was biased in favour of the management and as such, order of termination passed on the basis of the same is illegal and unlawful and liable to be set aside.

3. In the reply filed by the respondent, employment of the petitioner as alleged is admitted but it is asserted that the services of the petitioner were dispensed with after holding a proper domestic enquiry in which, he was given complete opportunity of participation and thereafter an order of termination was passed and so, the same was valid and proper.

4. On the pleadings of the parties, the following issues were settled for decision on 6th June, 1985 :—

(1) Whether a valid and proper enquiry was held by the respondent before terminating the services of the workman ? OPM.

(2) Whether the termination of services of Shri Udham Singh is justified and in order ? If not, to what relief is he entitled ?

5. The management examined MW-1 Shri Shyam Wadhwa clerk, MW-2 Shri K.K. Chabra, Inspector, MW-3 Shri Raj Kishan, Inspector, MW-4 Shri N.S. Phougat, Traffic Manager, who held the enquiry.

The petitioner appeared as his own witness as WW-1.

6. Learned Authorised Representatives of the parties heard.

7. *Issue No. 1.*—To prove this issue, the respondent examined MW-1 Shri Shyam Wadhwa clerk, who produce the enquiry filed in the Court. MW-2 Shri K.K. Chabra, Inspector, who made a statement regarding checking of the bus made by him on 2nd March, 1983. MW-3 Shri Raj Kishan, who was with Shri Chabra at the time of checking of the bus, MW-4 Shri N.S. Phougat, Traffic Manager, who conducted the enquiry against the petitioner. He stated that he remained posted as Traffic Manager, Haryana Roadways, Sirsa from 1979 to 1981 and was appointed Enquiry Officer in this case and that during the enquiry proceedings, he recorded the statements of Shri Chabra and Raj Kishan, Inspectors in the presence of the petitioner and the petitioner was given opportunity to cross examine them and also to produce his defence. The enquiry proceedings are Examined MW-3/A and his report is MW-4/A.

8. In defence the petitioner appeared as WW-1 and stated that on 2nd March, 1983 when the checking was made he had not embezzled any Government money and had not issued any old tickets to the passengers and that no list of witnesses was given to him and that the enquiry was not conducted in accordance with the principles of natural justice, because he was not given an opportunity to produce his defence and that he had lodged a complaint against the checking staff Shri Chabra and Raj Kishan to the State Transport Controller, Haryana, Chandigarh and as such, they were piqued against him.

9. The learned authorised Representative of the petitioner rightly contended that the charges framed against the petitioner are so vague and ambiguous that no enquiry on the basis of the same could be ordered or held or any findings recorded. In spite of my best efforts, I could not make out as to what mis-conduct was committed by the petitioner. At best it could be alleged that the petitioner has not made entries in the way bill and that he was holding some tickets already issued as per the way bill, which he could use in future. So, in a way, the petitioner had intended to commit acts of mis-appropriation in future. The learned Authorised Representative of the respondent Shri Kohli could not point out any rules/regulations or statute, violation of which, was made by the petitioner, nor any such rules or regulations or statute has been quoted in the charge-sheet issued to the petitioner. In that behalf, he has drawn my attention to 1985 (I) All India Service Law Journal 648 between S. Shabapathy *versus* State of Tamil Nadu, in which, his Lordship of Hon'ble High Court of Madras observed and I quote :—

“It will be highly improper and definitely prejudice and lack of the opportunity will be spelt out if the authority should vaguely allege that the acts and omission of the accused servant

will attract the mischief of rules and regulations. The notice of memorandum of charges if there is a reliance on a particular rule or regulation must set for that rule or regulation. The need for the charges to be definite, specific and unambiguous has been stressed by catena of decisions and there is no need to enumerate all of them here. Since I find that the rule with regard to giving a reasonable opportunity to answer the charges after the accused servant has been informed specifically and with definiteness about the same has been violated, there is a ground for interfering in writ proceedings."

10. In the present case, in the charge-sheet no Rules or Regulations has been quoted, violation of which has been committed by the petitioner. The management was given an option to produce any instructions, Rules and Regulations on the subject, but Shri Kohli learned Law Officer of the respondent admitted that no such Rules or Regulations exist, violation of which is alleged to have been committed by the petitioner. Validity of the enquiry report can also be assailed on the ground that the procedure followed by the Enquiry Officer was absolutely unheard of. Happily the management has placed on record the enquiry proceedings in original. First of all the Enquiry Officer recorded the statement of Shri K. K. Chabra, Inspector and thereafter he choose to record the statement of the petitioner. After that the petitioner was given an opportunity to cross examine Shri K. K. Chabra and thereafter to produce in defence. The petitioner made a statement that he will not do so. The Enquiry Officer thereafter proceeded to record the statement of Raj Kishan, Inspector, who has with Shri Chabra at the time of checking of the bus. Recording of statement of the petitioner before close of the evidence of the management is a serious irregularity, which cannot be condoned. On this ground also, the enquiry conducted in this case, cannot be held to be valid and proper. Another ground of attack was that the witnesses of the management have made statements in the Court in variance to the one made by them before the Enquiry Officer. Before the Enquiry Officer Shri Raj Kishan, Inspector stated that after checking of the bus, cash with the petitioner was also checked, but in the Court both Shri Chabra and Raj Kishan denied that the cash of the petitioner was checked, though the cash was found to be in accordance with the amounts realised by the petitioner. So, under these circumstances, the enquiry held in this case, cannot be held to be valid and proper.

11. The petitioner has also placed on record the photo copy of the complaint Exhibit W-1, which he had given to the State Transport Commissioner, Haryana, Chandigarh, with a copy to the General Manager Haryana Roadways, Sirsa, in which, he has levelled serious allegations against Shri Chabra and Raj Kishan Inspectors. He alleged that these two Inspectors are in the habit of collecting monthly illegal gratification from the conductors of the Haryana Roadways and making false reports against those who fail to gratify them. This complaint was filed by him much earlier to the report of the Inspector on the basis of which the enquiry was held. So, there is no question of this complaint being a ploy adopted by the petitioner to malign these Inspectors.

12. In the light of my fore-going discussion, there is no escape from the conclusion that the enquiry in this case was valid and proper and that the same was held on the basis of the charges, which were vague and indefinite and as such, the same cannot be sustained. So, this issue is answered against the respondent.

13. *Issue No. 2.*—The basis of the order of termination is the enquiry report. The same has been held not to be valid and proper, so, the order of termination cannot be sustained and as such, the same is set aside. Services of the petitioner were terminated on 2nd February, 1983. The demand notice was raised by him on 31st May, 1984 after a lapse of more than one year. This delay cannot be said to be inordinate one. So, the petitioner cannot be denied the benefits of back wages. The petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly.

Dated the 21st April, 1986

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 2-85/688, dated 8th May, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.